IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1298 of 2004

Rajamanickam .. Petitioner

Vs.

1.Tmt.Jeeva
2.Minor Baby Tebi Daniya .. Respondents

Prayer:- This revision has been preferred against the order dated 29.7.2003 made in M.C.No.16 of 2002 on the file of the Family Court at Coimbatore.

For Petitioner :Mr.V.Raghavachari
For Respondents :No appearance

JUDGMENT

The respondent in M.C.No.16 of 2002 is the revision petitioner herein. M.C.No.16 of 2002 was filed before the Family Court, Coimbatore, by the petitioners under Section 125 of Cr.P.C., for maintenance. According to the first petitioner, she is the wife of the respondent and the second petitioner is the daughter of the first petitioner and the respondent.

2.The averments in the petition filed by the petitioners is that on 8.11.2000 the marriage between the first petitioner/wife and the respondent/husband was solemnized as per the Christian custom and that at the time of marriage the first petitioner's parents have presented 12 soverigns of god ornaments besides Rs.10,000/- cash and that the first petitioner and the respondent lived happily for nearly two months and thereafter there arose a misunderstanding between the first petitioner and the respondent on the eve of Christmas the sister of the respondent insisted the first petitioner's parents to present a gold ring to her brother/respondent and since the parents of the first petitioner were not in a position to present a gold ring to the respondent, the respondent began to ill-treat the first petitioner and that the respondent also addicted to drinks and used to beat the first petitioner often and has also failed to maintain the petitioners which made the first petitioner to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

go out of the matrimonial home on 23.2.2001 to her sisters house at Erode and there was a punchayat took place at Erode. But the respondent has failed to abide by the decision taken in the panchayat. Through phone the respondent has demanded Rs.10,000/- towards additional dowry. The frist petitioner had issued notice on 4.4.2000, which was received by the respondent. Thereafter, the respondent came for settlement and agreed to set a separate home at Door No.10, Santhan Street, Kurampatti Post, Erode, and at that time the first petitioner had brought cot, bureau, washing machine and other house hold articles from her parent's house. Even thereafter, the respondent had not changed his attitude. He used to come at late hours to the house and used to beat the petitioners. The first petitioner came to her parents' house for delivery. Even after the delivery the respondent had never cared to see her and the child. Even for the letter written by the first petitioner dated 4.11.2000 the respondent has not chosen to send any reply. The respondent is working as a lab technician at Chittode hospital run by Dr.Sengodan and he is getting Rs.5,000/- per month towards his salary. So towards the maintenance the first petitioner has claimed Rs.2000/- for month and the second petitioner has claimed Rs.1,000/- per month.

3.The respondent/husband in his counter has admitted the marriage between him and the first petitioner. But he would state that he never demanded any gold ring from the first petitioner or from her parents. According to the respondent/husband, the first petitioner had not returned from her parents' house after the delivery. According to the respondent, without any rhyme or reason the first petitioner along with the second petitioner had left the matrimonial home. According to him, he is drawing only Rs.1,500/- per month towards his salary. He has further admitted that he has no objection for paying maintenance to the second petitioner commensurate to his salary. According to the respondent/husband, the first petitioner had already got married and while the first marriage is subsisting she had married the respondent for the second time.

4.Before the trial Court, the first petitioner had examined herself as P.W.1 and the respondent had examined himself as D.W.1. On the side of the petitioners Ex.P.1 to Ex.P.3 were marked. On the side of the respondent Ex.R.1, salary receipt, dated 25.7.2002 was marked.

5.After going through the evidence both oral and documentary the learned trial judge has dismissed the claim of the first petitioner, but allowed the claim of the second petitioner by awarding Rs.1,000/- towards the maintenance per month from the date of the petition, which is being challenged by the respondent/husband (in M.C.No.16 of 2002), before this Court.

6.Now the point for determination in this revision is whether the order of maintenance passed by the trial Court in favour of the second petitioner, minor Baby Tebi Daniya, is sustainable for the reasons stated in the memorandum of this revision?

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7.The Point:- According to the revision petitioner his monthly salary is only Rs.1,500/- and without taking into consideration this fact, the learned trial Judge has awarded Rs.1,000/- per month towards maintenance for the second petitioner in M.C.No.16 of 2002. To substantiate his contention that he is drawing only Rs.1,500/- at the relevant point of time he has produced Ex.R.1-pay certificate, which was issued by the Proprietor of X-ray & Chemical Laboratory, Chittode. Even according to P.W.1, the respondent/husband is working only at Chittode as lab technician. But according to her, the respondent is drawing a monthly salary of Rs.5,000/-. But the learned trial Judge without giving any reason for rejecting Ex.R.1 has fixed the maintenance for R2 as Rs.1,000/- per month. Further on the side of the petitioners there is no documentary evidence produce to show that the monthly income of the respondent is Rs.5000/-. Under such circumstances, I am of the view that the maintenance of Rs.1,000/- per month for R2 fixed by the learned trial judge is not in commensurate with the income of the respondent/husband as per Ex.R1. Point is answered accordingly.

8.In fine, the revision is allowed and the monthly maintenance amount for R2-Minor Baby Tebi Daniya fixed by the trialCourt in M.C.No.16 of 2002 is modified and fixed as Rs.500/- and the respondent/husband is directed to pay the maintenance amount of Rs.500/- per month to R2-Minor Baby Tebi Daniya from the date of filing of the petition on every 5th of the English calendar. The 2nd petitioner in M.C.No.16 of 20002 is at liberty to file fresh maintenance application for enhancement if the salary of the respondent/husband is enhanced subsequent to the date of Ex.R.1.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

The Family Court, Coimbatore.

1 cc To Mr.V.Raghavachari, Advocate, SR.44378.

Crl.R.C.No.1298 of 2004

VRK(CO)
RVL 27.07.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/